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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,806	02/23/2004	Jan Roelof van der Meulen	1203.080	5460

7590 06/08/2007
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EXAMINER

QIN, JIANCHUN

ART UNIT	PAPER NUMBER
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2837

MAIL DATE	DELIVERY MODE
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06/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,806

Applicant(s)

MEULEN, JAN ROELOF VAN DER

Examiner

Jianchun Qin

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. In view of the Appeal Brief filed on 03/26/2007, PROSECUTION IS HEREBY REOPENED. A new ground rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomae (U.S. Pat. No. 976718) in view of Simons et al. (U.S. Pat. No. 6091009).

Regarding claim 1, Bartholomae teaches percussion musical instrument (Figs. 1-4), comprising: a set of clave blocks (j, j') each comprising a rigid body made of solid material (Figs. 1 and 3), said body having an open cavity (k and m) therewithin defined solely by said solid material (Figs. 1-4); and said bodies having substantially equal exterior dimensions and generate musical tones of a variety of pitches (page 1, lines 50-54).

Bartholomae does not mention expressly: different volumes of said open cavities therewithin provided to generate musical tones of a variety of pitches.

Simons et al. teach a block-type percussion musical instrument (Figs. 1-4), including bodies (21) having open cavities (25, 32 and 33), and different volumes of said open cavities therewithin provided to generate musical tones of a variety of pitches (col. 3, lines 29-36 and lines 61-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Bartholomae to vary the volumes of the open cavities by altering the depth of the slots or the wall thickness, as taught by Simons et al., in order to provide a set of blocks for generating musical tones of a variety of pitches without changing the exterior dimensions or the shape of the blocks (Bartholomae, page 1, lines 50-54; Simons et al., col. 1, lines 44-53; col. 3, lines 29-36 and lines 61-65).

Regarding claim 2 and 3, Bartholomae in view of Simons et al. teach the percussion musical instrument that includes the subject matter discussed above except: said set includes three clave blocks including a low pitch clave block provided to

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generate a low pitch tone, a medium pitch clave block provided to generate a medium pitch tone and a high pitch clave block provided to generate a high pitch tone.

However, in view of the teachings of Bartholomae and Simons et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the combination of Bartholomae and Simons et al. to make three clave blocks corresponding to three different favorable values of pitch tone, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 4, the teaching of Bartholomae includes: said body of at least one of said clave blocks has a mounting ring (i).

Regarding claims 5 and 6, Bartholomae does not mention expressly: said body of each of said clave blocks is made of plastic material; said body of each of said clave blocks is made by injection molding process.

The teaching of Simons et al. includes: said body of each of said clave blocks is made of plastic material (col. 3, lines 49-65); said body of each of said clave blocks is made by injection molding process (col. 3, lines 49-55).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Bartholomae as taught by Simons et al., in order to, at least, avoids the fragile nature of agogo chambers made from wood (Simons et al., col. 3, lines 56-65).

Regarding claims 7 and 8, Bartholomae does not mention expressly: said bodies of different volumes having different thickness of said solid material; said cavities include openings having different perimeters.

The teaching of Simons et al. includes: said bodies of different volumes having different thickness of said solid material (col. 3, lines 61-65); said cavities include openings having different perimeters (col. 3, lines 61-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Bartholomae to vary the volumes of the open cavities by altering the depth of the slots or the wall thickness, as taught by Simons et al., in order to provide a set of blocks for generating musical tones of a variety of pitches without changing the exterior dimensions or the shape of the blocks (Bartholomae, page 1, lines 50-54; Simons et al., col. 1, lines 44-53; col. 3, lines 29-36 and lines 61-65).

Response to Arguments

4. Applicant's arguments received 03/26/2007 with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Claims 1-8 are rejected as new prior art references (U.S. Pat. No. 976718 to Bartholomae and U.S. Pat. No. 6091009 to Simons et al.) have been found to teach, in combination, the claimed invention. Detailed response is given in section 2 as set forth above in this Office Action.

Prior Art Citations

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) Cohen (U.S. Pat. No. 3893363) is entitled "Kit particularly useful for mounting percussion instruments to a stand".

2) Kuijpers (U.S. Pat. No. 3595119) is entitled "Xylophone like sound producing unit".

3) deArmas (U.S. Pat. No. 4362080) is entitled "Staccato cowbell".

4) Cohen et al. (U.S. Pat. No. 4898061) is entitled "Block-type percussion instrument".

5) Shimoda et al. (U.S. Pat. No. 4779507) is entitled "percussion musical instrument".

Contact Information

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jianchun Qin whose telephone number is (571) 272-5981. The examiner can normally be reached on 8am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jianchun Qin
Examiner
Art Unit 2837

JQ



LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER